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BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.

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Joint Application of )  
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AMERICAN AIRLINES, INC. )  
)

and )  
)

BRITISH AIRWAYS PLC )  
)

under 49 U.S.C. §§ 41308-41309 for approval of )  
and antitrust immunity for agreement )  
)

Docket OST-2001-10387-48

Joint Application of )  
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)

AMERICAN AIRLINES, INC. )  
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BRITISH AIRWAYS PLC )  
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under 14 C.F.R. Part 212 for statements of )  
authorization (blanket codesharing) and )  
under 49 U.S.C. § 40109 for related exemption )  
authority )  
)

Docket OST-2001-10388-38

**FIRST MOTION OF NORTHWEST AIRLINES, INC.,  
FOR PRODUCTION OF ADDITIONAL DATA**

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Dated: September 10, 2001

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, D.C.**

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**Joint Application of**

**AMERICAN AIRLINES, INC.**

**and**

**BRITISH AIRWAYS PLC**

**under 49 U.S.C. §§ 41308-41309 for approval of  
and antitrust immunity for agreement**

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**Docket OST-2001-10387**

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**Joint Application of**

**AMERICAN AIRLINES, INC.**

**and**

**BRITISH AIRWAYS PLC**

**under 14 C.F.R. Part 212 for statements of  
authorization (blanket codesharing) and  
under 49 U.S.C. § 40109 for related exemption  
authority**

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**Docket OST-2001-10388**

**FIRST MOTION OF NORTHWEST AIRLINES, INC.,  
FOR PRODUCTION OF ADDITIONAL DATA**

Northwest Airlines, Inc., ("Northwest") hereby moves the Department to order the production of the following additional data from American Airlines, Inc. ("American") and British Airways Plc ("BA") (collectively, the "Joint Applicants") in the above-captioned alliance proceeding:

1. Origin and destination ("O&D") passenger traffic between  
BOS/ORD/MIA/DFW/JFK/EWR/LAX and any London airport, separated by airport in the

London system (e.g., LHR, LGW), and London Stansted ("STN")) and not aggregated, as is presently the case in the Joint Applicants' submission. See Joint Exhibit JA-8, Table 1.

2. The same O&D data described in request no. 1 above, but broken out between individual Unrestricted Fare Classes (F, J, and Y) and all other Fare Classes and not divided only between Unrestricted Fares and all others, as is presently the case in the Joint Applicants' submission. See Joint Exhibit JA-8, Table 6.

3. Show revenue for the O&D data described in request no. 1 above by airport pair.

4. Show total U.S.-London O&D passengers and revenue carried by the Joint Applicants by individual London airport.

Northwest seeks all of the above data for both 1995 and 2000 operations.

In addition:

5. With respect to the "Transatlantic Routes between the Following Points" listed in Schedule 2-2 in the Codeshare Agreement between American Airlines, Inc. and British Airways Plc (the "Codeshare Agreement"), specify which London airport is to be served for every route listed therein.

6. With respect to Schedule 2-2 of the Codeshare Agreement, for any U.S.-London route listed therein on which the Joint Applicants plan to transfer service from LGW to LHR during the first three years after final government approval (U.S., U.K., and EU) of the proposed alliance, or for any U.S.-London route that will be added to LHR service in that time frame, specify the source of the LHR slot that will be used to fund the transferred or added service (i.e., lease, purchase, or cancellation of existing service).

7. Specify which U.K. Gateway currently serves each of the points listed in Schedule 2-1 of the Codeshare Agreement, and in addition specify which U.K. Gateway will

serve each of such points in the first year after final government approval (U.S., U.K., and EU) of the proposed American-BA alliance.

8. With respect to Schedule 2-1 of the Codeshare Agreement, for any Europe-, Africa-, or Middle East-London service listed therein on which the Joint Applicants plan to transfer service from LGW to LHR during the first three years after final government approval (U.S., U.K., and EU) of the proposed alliance, or for any Europe-, Africa-, or Middle East-London route that will be added to LHR service in that time frame, specify the source of the LHR slot that will be used to fund the transferred or added service (i.e., lease, purchase, or cancellation of existing service).

**1. The Department Has A Clear Duty to Develop A Sufficient Factual Predicate in Order to Adequately Assess The Proposed Alliance.**

Under the requirements of the statute that governs the Department's review and approval of applications for antitrust immunity, the Department has a duty to make numerous specific findings as to the anticompetitive effects of any proposed alliance. 49 U.S.C. § 41309(b). Pursuant to that duty, the Department's approval of any proposed alliance "must rest on a justification of serious transportation need or important public benefits, with need for a [Department] showing of an appropriate factual predicate." United States v. C.A.B., 511 F.2d 1315, 1317 (D.C. Cir. 1975).

As Northwest argued in its September 5, 2001 Motion for Extension of Procedural Dates filed in this proceeding, interested parties under elementary principles of due process must have the opportunity to fully answer the Joint Applicants' ATI and Codesharing Applications. In order to do that, interested parties must have access to the same array of relevant information that the Department itself will use in reaching a decision under § 41309(b).

**2. The Specific Data That Northwest Seeks Relates Solely to Critical, Disputed Issues in This Proceeding.**

**a. Requests Nos. 1-4**

A central issue in this proceeding is whether a grant of antitrust immunity to the American-BA alliance will result in reduced competition in any relevant market. The Joint Applicants have submitted a lengthy exhibit (Exhibit JA-8) attempting to establish with respect to each of the overlap routes that competition will not be reduced. This exhibit, however, is virtually worthless because it aggregates the data for same-city airports, including London Heathrow and London Gatwick, and thus masks the competitive effect of the alliance on the London Heathrow routes.

Northwest recognizes that American and BA contend that London Gatwick and London Heathrow are substitutes for one another and are in the same market. That, however, is a point of dispute that must be tested in this proceeding, and there is certainly evidence to the contrary. In 1998, for instance, the Department of Justice demonstrated by overwhelming evidence that Gatwick and Heathrow were separate markets and that a variety of U.S.-Heathrow-specific markets were "relevant markets" for the purpose of antitrust analysis. American-BA I, Docket OST-97-2058, Comments of the Department of Justice, at 13-14 (May 21, 1998). Moreover, in a number of those relevant Heathrow markets, DOJ concluded that large amounts of commerce would be adversely affected by an American-BA alliance and that effective remedies were not available. On this basis the DOJ opposed the transaction outright. Id. at 1.

Now, only three years after DOJ's analysis, the Joint Applicants are attempting to skirt the question of whether Heathrow is a relevant market by lumping all London data together. But in fact, the evidence today is stronger than it was in 1998 that Heathrow is a relevant market and that consumers do not view Gatwick service as a sufficient substitute. British Airways's own

public statements demonstrate that service at Heathrow commands a 15% fare premium over comparable Gatwick service. British Airways Investor Day 2001, Network Presentation of Mr. Robert Boyle, General Manager of Network Planning, at p. 14. This is a conclusive admission by BA that these two airports are separate markets. In addition, recent analysis performed by Northwest indicates that there is a fare premium at London Heathrow of as much as 30% over London Gatwick, which confirms BA's admission that these are separate markets.

The Department should not permit the Joint Applicants to prejudge this key issue by submitting only aggregated data. Instead, the Department should insist that the data be resubmitted in a disaggregated format as requested in Requests Nos. 1-4. If, ultimately, the Department concludes that London Heathrow and London Gatwick are one market, it will be simple enough to combine the data at that time.

As the Joint Applicants rely heavily on the argument that the overall environment for alliances has significantly improved since their previous attempt to gain antitrust immunity was rejected in 1998, see, e.g., Joint Applicants' Antitrust Immunity Application at 7-11, Northwest asks that all of the data sought in Requests nos. 1-4 be provided not only for 2000 operations but for 1995 (the last full year of operations before American and BA filed for antitrust immunity) operations as well.

**b.      Requests Nos. 5-8**

Another central issue that the Department will have to resolve in this proceeding is whether there are public interest benefits resulting from a grant of antitrust immunity that may outweigh the anticompetitive harms. The Joint Applicants argue that the alliance will produce improved consumer service and increased competition by allowing American to serve new markets in Europe and beyond by making connections with BA at London. To evaluate the

public benefit of American's ability to serve these markets, the Department needs to know what new connecting markets will be opened up to American as a result of the proposed alliance. This information is not evident from the Joint Applicants' submission.

At present, both American and BA operate U.S.-London routes to Gatwick as well as to Heathrow. Given the extraordinary slot constraints at Heathrow, it is inconceivable that all of the Joint Applicants' U.S.-London flights will be transferred to Heathrow. Schedule 2-2 to the Codeshare Agreement identifies the markets in which BA and American plan to code-share. This schedule, however, fails to identify which routes will connect to which routes. To be able to determine which connections can be built, the Department needs to know which U.S.-London routes will be operated to London Heathrow and which will be operated to London Gatwick. Similarly, the Department needs to know which European, Middle Eastern, and African routes will be operated to Gatwick, and which routes will be operated to Heathrow. Therefore, the Joint Applicants must be required to identify which routes will be operated to which London airport. Only then will the Department be able to determine what new code-share connections the proposed alliance will deliver to consumers.

To repeat, Northwest believes that access to the data described above is essential for the Department to have a complete understanding of the public benefits and anticompetitive effects of the proposed alliance, and Northwest therefore asks that the Department order the prompt production of this data by the Joint Applicants.

**WHEREFORE**, Northwest respectfully urges the Department to require the Joint Applicants to promptly file with the Department the data described above, limited, to the extent necessary, to review solely by individuals who have filed confidentiality affidavits in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script, reading "Megan Rae Rosia", positioned above a horizontal line.

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**Certificate of Service**

I hereby certify that on this 10th day of September, 2001, I caused a copy of the foregoing Motion to be served by hand or by first class mail, postage prepaid, upon the following persons:

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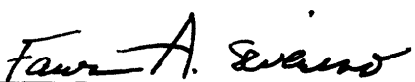
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